

OFFICE OF THE WASHINGTON STATE LIQUOR CONTROL BOARD

August 4, 1995

The special session of the Washington State Liquor Control Board was called to order at 9:50 a.m., Friday, August 4, 1995, at the Distribution Center, 4401 East Marginal Way South, Seattle, by Chairman Joe McGavick. He introduced Board Members Mike Murphy and Jack Rabourn, as well as Kim O'Neal, Assistant Attorney General. Carter Mitchell, Public Information Officer/Legislative Liaison, recorded the minutes. The meeting was held in Seattle to accommodate the representatives from the wineries who planned on attending the oenological meeting over the coming weekend. The Chairman explained that a traffic accident south of Tacoma had created a major traffic jam and caused the delay in starting the meeting for which he expressed regrets.

Chairman McGavick announced the purpose of today's public hearing is to consider a petition filed by the Washington Wine Institute to amend WAC 314-24-220 which pertains to bonded wine warehouses. The amendment deals with the removal of wine from such facilities. He called on Simon Siegl, Executive Director, Washington Wine Institute, to explain the problems the amendatory language would resolve.

SIMON SIEGL said the Institute's objective is to improve the Washington wine industry. To that end, Mr. Siegl said the existing rule implementing RCW 66.24.185 needs to be interpreted in a broader sense -- to permit wineries storing wine at bonded wine warehouses to remove and directly deliver the wine to retailers without having to go back to the winery first. It was his understanding, he said, the law was passed by the 1994 Legislature to better facilitate the wine industry's growth and development. He explained the geographical problems facing wineries in eastern Washington who need to meet the demands of western Washington. He said it is the Institute's view that the Board's existing interpretation of the statute and the definition of a winery should be relaxed to meet the original goals of the legislation of improving the industry. Mr. Siegl also indicated some smaller wineries had experienced difficulty in locating wholesalers who would devote the time necessary to promote a new label or limited supply. He said it was understandable that wholesalers would devote more time to the better selling brands, but the small wineries needed help in expanding their distribution beyond the tasting room. He indicated the Institute's current population of wineries consists primarily of small producers. He estimated over 50 percent of the fields produce less than 10,000 gallons of wine per year and those wineries sell primarily in-state. He said the new wineries and the producers who specialize in smaller productions would benefit the most from the proposed change.

Chairman McGavick thanked Mr. Siegl for his explanation of the petition. He stated that the Beer and Wine Wholesalers Association has expressed concerns about the proposal and called on Robert Baronsky, attorney for the Association, to point out any legal issues his organization has concerning the proposed language.

PLAINTIFF'S
EXHIBIT

CASE
NO. CV04-0360P

EXHIBIT
NO. 138

DEP EXHIBIT 90
CARTER MITCHELL
NOTARY PUBLIC

6-2705

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ROBERT BARONSKY said the amendatory language seeks to deal with problems facing the wine industry and that his Association is also interested in resolving the problems. Mr. Baronsky believed the Board's interpretation of the statute has been correct in the past and any expansion of the interpretation would go beyond what was specified in the law. He said the definitions proposed in the Wine Institute's petition are beyond the language of the original statute. Adopting the petition as it stands would be outside the scope of the Board's implementation of the statute. Also, he said his Association would assist wineries in locating wholesalers who could meet the needs of the small wineries. Calls to the Association's headquarters will bring such help since the Association also wants to see the industry prosper.

Chairman McGavick asked Mr. Baronsky to explain how RCW 66.24.185 prevents the wineries from distributing directly from a bonded wine warehouse. Mr. Baronsky responded that subsection (c) of section 3 requires the wine to "...be returned to the winery or another bonded wine warehouse..." The Chair then called for testimony from the sign-up sheets.

PETER DOW, said he wears two hats at today's hearing. His first hat represents the Family Winemakers of Washington State, a newly formed organization of 12 small wineries. He polled his membership and 100 percent favored the proposed rule change. He said the wineries who used bonded wine warehouses paid \$1,000 each to the Bureau of Alcohol, Tobacco and Firearms for federal licensure as a secondary winery. His second hat represents a small businessman who questions why the state should make it more restrictive or more difficult for small businesses to do business? Mr. Dow indicated he had spoken with Carter Mitchell about the problem and Mr. Mitchell had suggested the secondary winery location license, while costing \$100 per year, might be an option if other suggestions failed.

The Chairman asked Mr. Dow for a list of his organization's membership -- to inform the Board of who is being represented by the new organization. Mr. Dow indicated Chinook, Cavitapi, Washington Hills, Bookwalter Winery, White Heron, Hinzlerling Vineyards, Tucker Cellars, Barnard Griffin, Quilceda Creek Vinters, Andrew Will, Delille Cellars, Thurston Wolfe and Silverlake Winery were included on the list.

KAY SIMON of Chinook Wines, Prosser, said the winery she represents crushed 40 tons of grapes and had five different wines last year. All except a few special orders were sold within the state. Ms. Simon indicated the winery did not use distributors for their wines, but either sold direct from the tasting room or through personal delivery to the retail accounts. They currently use Conventry Vales bonded warehouse in Grandview for storage, but if that facility discontinues business in order to produce reds, they would need to find another storage. She said she cannot see the difference between a Washington winery using a bonded wine warehouse for storage and a California winery who ships to a wholesaler who in turn ships the wine to retailers.

Chairman McGavick asked Ms. Simon how large of a production 40 tons of grapes would make. She replied it would be well under 10,000

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gallons. Board Member Rabourn asked Ms. Simon why they did not use wholesalers for their wines. She said they could give better attention to their wines by doing the marketing and distributing themselves rather than relying upon wholesalers who are understandably more involved with larger producers.

SCOTT WILLIAMS of Kiona Vineyards, Benton City, said he represents a family owned and operated winery. He said the winery started out minuscule and is now small even though it produces over 10,000 gallons. He considers Kiona Vineyards as one of Tiger Mountain's (bonded wine warehouse) better accounts. He said they use the three-tier system for all of their distribution, but allowing wineries to pick up their own wine at a bonded wine warehouse and distribute from there made good common sense. He pointed out that Kiona Vineyards pays \$1,000 for a federal BATF occupational permit to do business as a winery at that location.

BILL SCHALLERT of Seattle, said he represents the Beer and Wine Wholesalers Association which has a large membership of 96 wineries. He said his Association is not opposed to changing the rule since the membership understands the foolishness of expecting someone to drive wine back to a winery, then turn around and drive it back to be sold to a retail account. He said representatives of his group had met with Mr. Siegl several times to discuss this problem and his own group would not voice opposition if some controls or limitations are put in place.

Chairman McGavick asked Mr. Siegl what the Institute's reaction is to the proposal of Beer and Wine wholesalers? Mr. Siegl said limiting things will only cause problems to develop in the future. Setting levels causes problems and his group could not suggest a specific amount or number of cases for removal which would not pose problems down the road.

Mr. Schallert said his group was willing to help small, family wineries to find distributors who would market their wines in various areas of the state. Wineries that would like to know who to contact can get in touch with the Association's staff in Olympia and wholesalers who specialize in small winery products would be recommended in specific areas.

JACK WORDEN of Worden's Winery in Spokane said he agrees with developing a limitation on the number of agents who would be allowed to remove products from a bonded wine warehouse. He said there is a distinct need for controls to be in place; however, he did foresee a problem with limiting the number of cases which could be removed. He cited his own winery as an example. A small number of cases might apply to the average custom label production he has, but for a major community event where a custom label might apply, the number of cases could be larger. He said he uses distributors whenever possible, but in many cases, he has small quantities of products for shipment and most of the distributors do not want to handle such small numbers. Furthermore, it is not economical nor practical in many instances for a distributor to handle small case orders.

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Mr. Worden also pointed out the changes that have taken place in the wine industry in recent years where many small wholesalers have gone out of business as a result of consolidation with larger companies. He said the total number of wholesalers that exist today cannot possibly support 88 wineries equally, nor should they be expected to do so from a practical or economic standpoint.

Chairman McGavick said he is concerned about the Institute's use of words which are not defined specifically. He pointed to "partners" as an example -- he asked if that means they have a financial interest in the operation. Mr. Siegl replied that to be considered a partner, an individual would have to have a financial interest in the operation.

RON GRIFFIN, representing Barnard Griffin Winery in Kennewick, said he supports the proposal. The family-owned winery faces a geographical problem: Picking up wine from a bonded wine warehouse, returning to the winery and then turning around to drive back to a retailer on the other side of the mountains is asking people to drive several hundred miles needlessly. Wineries located in eastern Washington produce the wine at those locations, but because of supply and demand, they store the wine on the west side where it is more readily available for distribution. Also, many smaller wineries cannot maintain adequate storage space for wines at the winery. It's better to share the costs for such storage among several wineries.

CANDACE FRASHER, representing Arbor Crest Wine Cellars in Spokane, said she strongly supports the proposal. She likened the restrictions on distribution to restrictions found in the former Soviet Union where people were bound by restrictions because of ignorance or fear. She said there is no place in the U.S. for the same type of restrictions or interpretations.

MIKE WALLACE, representing Hinzlerling Vineyards in Prosser, said his winery produces about 2,000 cases per year and 85 percent of the wine produced is sold at the winery. He said distribution is done by winery personnel who promote the products they make along the I-5 corridor from Bellingham to Olympia. The proposal adds flexibility to the rule and should be considered favorably by the Board. While his winery would not store wine in a non-air conditioned environment such as Tiger Mountain, others would and they should have the ability to distribute their own wines if they so wish. About 10 percent of the wineries in the state that existed a few years ago are gone. They simply could not sell their wines and went out of business. He said he has had five wholesalers who have gone out of business because of bankruptcy and it was difficult to find anyone who would actively promote a small operation. They are more interested in bigger producers.

LYN TANGEN, representing Caterina Winery in Spokane, said they are a young winery producing about 4,500 cases per year. Most of the production is sold in-state with a small amount going to special orders out of state. They use a distributor on both the east and west sides of the state. She supports the proposal and doesn't believe it supplants the distributors. Rather, if wineries promote their own products

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initially, they grow in popularity and if they grow in popularity, the demand for their products increase. In this way, the wineries are actually building a brand for the wholesalers to distribute once the brands become well known and demand goes up. She asked the Board what public good is being served by requiring her to drive 560 miles round trip to simply deliver her own wine? Furthermore, she said, speaking as an attorney, she did not see the same restrictions as were mentioned by the Beer and Wine Wholesalers to picking up her own wine.

Board Member Murphy said it seems like it would be very easy for someone to remove product from the bonded wine warehouse, once it was in their possession to merely deliver it wherever it was sold. He said while it was illegal to do so, it still seems as though it could happen.

Mr. Dow asked if Mr. Murphy was suggesting this as an alternative? Mr. Murphy replied that everyone knew it was against the law and he wasn't suggesting anything of the sort, but it still seemed extremely likely that it could happen.

VICTORIA CHIECHI-HINZE, representing the Washington Wine Institute as a lobbyist, said she would be interested in knowing what language changes to the statutes could be considered to make the winery business successful. She pointed out that the Legislature had, in the past, indicated its strong support for the industry and questioned what harm was present in making the business easier?

BILL PACKARD, Manager of Tiger Mountain Services of Kent, said it has been the objective of his company to support the small wineries and he strongly supports the measure. Since the BATF requires the wineries to be licensed such as that at Tiger Mountain, he believed a secondary license from the Board should resolve the issue.

Board Member Murphy asked if there was a number that could be used to determine how many agents would be allowed to remove product from a bonded wine warehouse? The audience response was that determining the number of agents might not be too much of a problem.

Chairman McGavick asked Carter Mitchell, Public Information Officer/Legislative Liaison, if he had any other suggestions which might resolve the problem. Mr. Mitchell indicated he did not and deferred to Rich Raico, MIW Supervisor, for a more detailed explanation of the secondary location license issue. Mr. Raico said this is an option and a couple of wineries in the state are in possession of such a license. Under an earlier Assistant Attorney General's Office interpretation, the storage of wine being finished or aged in the bottle had been used as one justification for the secondary location license.

Assistant Attorney General O'Neal asked if making changes per the recommendations of the Beer and Wine Wholesalers and Wine Institute would make a difference in terms of removing concerns about the proposed changes? Ms. Chiechi-Hinze said she did not see how limiting the number of cases removed from a bonded wine warehouse at a single time would have any effect on the industry. Mr. Schallert said serious damage could be done to a wholesaler or several wholesalers if a winery

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removed large amounts of wine and started distributing it themselves. He used Arbor Crest as an example and said if a large amount was removed and distribution disrupted through the three-tier system, there would be several distributors who would be hurt. Ms. Fraser said the wineries and distributors work together and believed neither wishes to see the other injured in terms of business activities.

Board Member Murphy said he still believes there may be a solution to the problem. He said the regulation needs to be worked out and the stumbling block seems to be in setting limitations or numbers. Board Member Rabourn asked if there was any specific number of cases per day which everyone could agree upon. The audience responses varied from 30 to 50 cases as possibilities.

Chairman McGavick said he wants to see the Beer and Wine Wholesalers and the Washington Wine Institute get together and see if there was something everyone could be comfortable with that could be developed very soon. He obtained agreement from both Mr. Schallert and Mr. Siegl that their groups would meet to see if some common ground could be worked and would respond back to the Board very soon. Chairman McGavick reminded both groups the Board is scheduled to reach a decision on the petition next Wednesday, August 9, 1995.

MEETING ADJOURNED. The meeting was adjourned at 11:40 a.m.

		
Joseph L. McGavick Chairman	Mike Murphy Board Member	Jack Rabourn Board Member

Attest


Board Secretary

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